IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRI. APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 724 OF 2005

1. Shri Madhukar Pandurang Metkar
2. Shri Rajesh Madhukar Metkar
3. Shri Dilip Madhukar Metkar
4. Shri Prakash Bhaurao Thorat
5. Shri Arun Shankar Khairnar
6. Shri Vijay Madhukar Metkar
7. Shri Ambadas Trimbak Ahirao

All residents of -
At & Post Deola, Tal. Deola,
Dist. Nashik. ... Petitioners

V/s

1. Shri Omprakash Tarachand Patel,
   R/at C/o Anup Traders,
   At & Post Deola, Tal. Deola,
   Dist. Nashik.

2. The State of Maharashtra ... Respondents

Mr. V.V. Purwant for the petitioners.

Ms. Shubhada Dhamale for the Respondent No.1.

Mr. I.S.Thakur, A.P.P. for the Respondent No.2.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: 26TH APRIL, 2005

ORAL JUDGMENT (Per Khandeparkar, J.):

1. Heard. Rule. By consent, Rule made returnable forthwith.

2. The petitioners challenge the order and judgment passed by the Addl. II Ad-hoc Sessions Judge, Nasik, on 10.2.2005 in Criminal Revision Application No. 32 of 2005 on various grounds including the ground that, inspite of the fact that the petitioners were the complainants in the original proceeding, the revisional appellate authority, without hearing the petitioner, set aside the order passed by the Sub-Divisional Magistrate.

3. Undisputedly, by the impugned order, the revisional Court has set aside the order passed by the Sub-Divisional Magistrate on 4.1.2005 without hearing the petitioner and without joining the petitioners as parties to the proceedings. It is also a matter of record that the Criminal Revision Application No. 32 of 2005 was filed against the order of the Sub-Divisional Magistrate dated 4.1.2005 without joining the petitioners as the parties to the proceedings inspite of the full knowledge to the respondent No.1 who was the applicant in the said revision application that the original order dated 4.1.2005 by the Sub-Divisional Magistrate was passed on account of the complaint filed by the petitioners.

4. We have also perused the report which was called for from the learned Addl. Sessions Judge and in the said report the learned Judge has also confirmed the fact that the original complainant was required to be heard in the matter and it was not brought to his notice by the respondent No.1 while disposing of the revision application.

5. Apart from the requirements of the statutory provisions comprised under Sec. 397 of the Cr.P.C., it is the basic principle of natural justice which requires hearing of all the parties to a proceeding before any order is passed by any judicial authority. Once it was apparent that the Sub-Divisional Magistrate had passed the order in the proceedings initiated at the instance of the petitioner herein and that the petitioners were not joined as the parties in the revision application, nor they were heard in the matter on account of non-service of notice regarding the revision application on them, it was absolutely necessary for the revisional Court either to dismiss the revision application or to call upon the respondent No.1 to join the petitioners as

the parties to the proceeding and to issue notice to the petitioners and after being heard in the matter to

decide the revision application in accordance with the provisions of law. The entire proceeding having been disposed of without giving any opportunity of being heard to the petitioners by the revisional Court, the impugned order cannot be sustained and is liable to be set aside on that count itself and the matter needs to be remanded to the revisional Court to dispose of the same in accordance with the provisions of law after hearing the petitioners pursuant to the petitioners having been joined as the party respondents in the said proceeding.

6. It is made clear that this Court has not expressed any opinion on the merits of the case or any other point sought to be raised by either of the parties.

7. In the result, the petition succeeds. The impugned order is set aside. The matter is remanded to the revisional authority restoring the Criminal Revision Application No. 32 of 2005 on the file of the Sessions Court at Nasik. The respondent No.1 to join the

petitioners as the party respondents in the said proceeding in case the respondent desire to pursue with the matter and the Sessions Court shall dispose of the proceeding in accordance with the provisions of law after hearing the parties including the petitioners herein.

9. Rule is made absolute accordingly with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)